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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR       | ATTORNEY DOCKET NO.           | CONFIRMATION NO. |
|--|-------------|----------------------------|-------------------------------|------------------|
| 10/656,839   | 09/05/2003  | Johannes Henricus van Esch | 2183-6090US                   | 8407             |
| 24247  | 7590        | 09/01/2004                 |                               |                  |
| TRASK BRITT<br>P.O. BOX 2550<br>SALT LAKE CITY, UT 84110 |             |                            | EXAMINER<br>KUMAR, SHAILENDRA |                  |
|  |             |                            | ART UNIT<br>1621              | PAPER NUMBER     |
| DATE MAILED: 09/01/2004                                  |             |                            |                               |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/656,839

Applicant(s)

VAN ESCH ET AL.

Examiner

SHAILENDRA - KUMAR

Art Unit

1621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 7-9 and 13 is/are rejected.
- 7) ☒ Claim(s) 4, 6, 10-12 and 14-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/5/03 and 9/29/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Claims 1-20 are pending in this application.

#### ***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in EPO on 6/3/2001. It is noted, however, that applicant has not filed a certified copy of the European patent application as required by 35 U.S.C. 119(b).

#### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 9/5/03 and 9/29/03 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3 and 5 and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Kurtz et al(J. Biol. Chem, 1939).

Kurtz et al, Table I on page 695, and page 693, 1st paragraph anticipate instant gelling agent and method of preparing, especially when in the instant claims R and R' are alkyl, or aryl and n is 4.

5. Claims 1-2 and 5 and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Tabern et al(US 2,084,626).

Tabern et al, column 1, example 1, examples 3 and 4, anticipate instant gelling agent and process of making, especially when in the instant claims, R and R' are linear alkyl and n is 4.

6. Claims 4, 6, 10-12 and 14-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

This claim is couched in terms of process of preparing a gel or thickening comprising mixing the gelling agent with a composition. There is no mention of what type of composition is contemplated and also how the mixing takes place and under what conditions. Basically there is no recitation of steps involved in the process, thus rendering the claims indefinite.

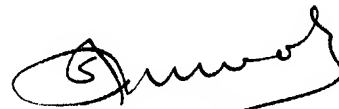
Totton et al(J. Org. Chem, 1957) is further cited to show the state of the art.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHAILENDRA - KUMAR whose telephone number is (571)272-0640. The examiner can normally be reached on Mon-Thur 8:00-5:30, Alt Fri.

Art Unit: 1621

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571)272-0646. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



SHAIENDRA - KUMAR  
Primary Examiner  
Art Unit 1621

S.Kumar  
8/31/04